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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH PERSONETTE, JAMES SULLIVAN,
and DALANA BRAND,

Plaintiffs,
vs.

ELON MUSK, ET AL.,
Defendants.

Case No. 3:24-cv-6266-JCS

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS THE COMPLAINT'S
SECOND CAUSE OF ACTION**

Hearing Date: January 16, 2025
Time: 10:00 a.m.
Location: Courtroom 8
Hon. Jacqueline Scott Corley

Complaint Filed: September 5, 2024

Defendants Elon Musk; X Corp.; and the Twitter, Inc. Change of Control and Involuntary Termination Protection Policy (collectively, “Defendants”) respectfully request that the Court take judicial notice of the following documents attached as Exhibits 1 and 2 to the concurrently filed Declaration of Abbey M. Glenn (“Glenn Decl.”) in support of Defendants’ Motion to Dismiss the Complaint’s Second Cause of Action:

Exhibit 1: The year-end 2021 Form 10-K filed with the Securities and Exchange Commission (“SEC”) by Twitter, Inc., dated February 16, 2022.

Exhibit 2: The 2022 Definitive Proxy Statement filed with the SEC by Twitter, Inc., dated May 25, 2022.

Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are “not subject to reasonable dispute” and “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Similarly, in ruling on motions brought pursuant to Federal Rule of Civil Procedure 12, courts regularly consider documents that are “incorporate[ed] by reference” into a complaint. *See, e.g., Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Here, Defendants’ proffered documents warrant judicial notice.

Exhibits 1 and 2 are properly subject to judicial notice as documents filed with a federal agency, the SEC, and which are publicly available. *E.g., Dreiling v. American Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (court “may consider documents referred to in the complaint or any matter subject to judicial notice, such as SEC filings”). Plaintiffs cite and rely on Exhibit 2 in their Complaint, directly quoting it. Compl. ¶¶ 129-32. Thus, the Court may properly take judicial notice of these SEC filings. *See, e.g., Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1123 (N.D. Cal. 2017) (taking judicial notice of SEC filings); *City of Royal Oak Retirement Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1059 (N.D. Cal. 2012) (taking judicial notice of SEC filings and acknowledging that “when a complaint references and necessarily relies on a document, the court ‘may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).’”) (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)).

For these reasons, Defendants respectfully request that the Court take judicial notice of

1 Exhibits 1 and 2.

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3 Dated: November 15, 2024

Respectfully submitted,

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5 MORGAN, LEWIS & BOCKIUS LLP

6 By /s/ Christopher Boran

Eric Meckley

7 Jeremy Blumenfeld (admitted *pro hac vice*)

Christopher Boran (admitted *pro hac vice*)

8 Abbey Glenn

Brian Sullivan (admitted *pro hac vice*)

9
10 *Attorneys for Defendants*